

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHELLE GARAMELLA,)
)
PLAINTIFF,)
)
VS.) **CIVIL ACTION NO. 08-**
)
) **JURY TRIAL DEMANDED**
)
VALENTINE & KEBARTAS, INC.) **UNLAWFUL DEBT COLLECTION**
)
DEFENDANT.) **PRACTICES**
)

COMPLAINT

I. INTRODUCTION

1. Plaintiff Michelle Garamella alleges that Defendant engaged in abusive, deceptive, and unfair acts in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereinafter "FDCPA"). Specifically, Defendant, by and through the actions of its employees/agents failed to provide required disclosures when leaving messages on Plaintiff's phone, and also made false and deceptive statements designed to create the implication that legal action had already been taken against plaintiff when no such action was pending. Defendant engaged in a pattern of false and deceptive behavior as a means to attempt to collect on a debt allegedly owed by Plaintiff.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), and 28 U.S.C. § 1337. Venue in this District is proper in that the Defendant transacted business here and the conduct complained of occurred here.

III. PARTIES

3. Plaintiff is a natural person residing in the City of St. Louis, State of Missouri.
4. Defendant Valentine & Kebartas, Inc. (hereinafter referred to as "V & K") is a Corporation with its principal place of business located at 15 Union Street, Lawrence, MA 01840, doing business in the State of Missouri.
5. Defendant is engaged in the collection of debts from consumers using the mail, facsimile transmission and telephone. Defendant regularly attempts to collect consumer debts it purchases after default and/or consumer debts alleged to be due to another. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).
6. The acts of Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.

IV. FACTUAL ALLEGATIONS

7. All of the acts about which Plaintiff complains took place between June 5, 2008 and June 17, 2008, and involved a series of voice messages left by Defendant's employees on the telephone message recording device of Plaintiff's personal cell phone concerning an alleged debt which she originally had with Chase Bank USA. All of the messages have been preserved by Plaintiff on a cassette tape, and have been transcribed. Defendant also sent a dunning letter to Plaintiff dated June 5, 2008 which was received on June 8, 2008. A true and accurate copy of said letter has been marked as Plaintiff's Exhibit A and attached hereto.

8. The first message was left at 8:57 a.m. central standard time on Thursday, June 5, 2008, and included the following statements from V & K's employee: "Hi, Michelle. This is Alex. Good morning. I am trying to get in contact with you. I just received an account into my office in behalf of a company... Chase Bank. That case number is 7589282. Can you try

giving me a call, and let me see if I can help you out in this matter. Give the information on the complaint. There's an open court settlement available also on the account. Try to take advantage of it. The toll free number is 877-250-7416, and my direct extension is 835. My name is Alex, okay. Thank you. Have a great day."

9. The second message was left on Monday June 9, 2008 at 1:02 p.m. central standard time, and it included the following statements from V & K's employee: "Yes, hello. This message is for Michelle Garamella. My name is Raymond Chapman. I'm calling from Valentine & Kebartas. Please call me back at 1-877-250-7416, extension 692. Your... invoice number is 7589282. Use that number when you call. Thank you."

10. The third message was left on June 10, 2008 at 1:34 p.m. central standard time and it included the following statements from V & K's employee: "Yes, this is for Michelle Garamella. This is Daniel Bowen calling on behalf of Valentine & Kebartas. Please try to give me a call back at my toll free number which is 1-877-250-7416. My direct extension is 407, and the case number that this call is in regard to is 7589282. Once again, 7589282. I'll be at the office until 8:00 p.m. central time. Please try to get in contact with me today before then, so we can discuss this matter at hand and hopefully have this resolved as soon as possible in order to try to prevent this from going in to legal actions. Once again this is Daniel Bowen calling on behalf of Valentine & Kebartas, case number 7589282. My toll free number is 1-877-250-7416, extension 407. Please give me a call."

11. The fourth message was left on June 13, 2008 at 9:04 a.m. central standard time and it included the following statements from V & K's employee: "This is a message for Michelle Garamella. My name is Raymond Chapman and I am working on your Chase Bank Visa account. Your balance is currently \$3,378.15. I have been authorized to reduce your

balance by 35% but only if you call me at 1-877-250-7416, extension 692 to outline the terms and conditions of this offer that are put into force. Your account number is 7589282. Please enter that number when you call. I'll be here in the office until 5:00 p.m. central time today and tomorrow from 8:00 a.m. to 11:00 a.m., so please call. It's great deal and a great offer. Please take advantage of it and call. Thank you."

12. The fifth message was left on June 17, 2008 at 11:11 a.m. central standard time and it included the following statements from V & K's employee: "Yes, this message is for Michelle Garamella. My name is Raymond Chapman. I'm calling from VKI, Valentine & Kebartas. I am currently working on your Chase Bank Visa account. The balance is currently \$3,378.15. I am authorized to reduce your balance by 35%, but only if you call me at 1-877-250-7416, extension 692. Your...invoice number is 7589282. Please give me that number when you call. Thank you. "

CAUSE OF ACTION

VIOLATIONS OF THE FDCPA

13. Plaintiff incorporates herein by reference each and every prior allegation and fact as though fully restated and re-alleged.

14. Defendant's actions violated the FDCPA. The violations include, but are not limited to, the following:

(a) Defendant violated 15 U.S.C. § 1692e(11) when its employees failed to identify themselves as a debt collectors;

(b) Defendant violated 15 U.S.C. § 1692d(6) when its employees failed to provide meaningful disclosure of their identities and Defendant's identity. Defendant's employees failed to identify the nature of Defendant's business employer on 5 separate occasions and failed to disclose their status as debt collectors;

(c) Defendant violated 15 U.S.C. § 1692e(5) when its employees made false and deceptive statements designed to create the belief or implication that legal action had either already been taken or was imminent when they referred to the account number as a "case number" and also referred to a "Complaint" and "an open Court Settlement" when no legal action was imminent and when said legal action had not been taken and was not intended to be taken.

(d) Defendant violated 15 U.S.C. § 1692e(10) when its employees made false representations and/or deceptive means in an attempt to collect a debt from the Plaintiff.

(e) Defendant's actions violated 15 U.S.C. § 1692f as they constituted unfair and unconscionable means to collect the debt.

15. As a result of the above violations of the FDCPA, the Defendant is liable to the Plaintiff for statutory damages, and costs and attorney's fees.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Statutory damages pursuant to 15 U.S.C. § 1692k;
- B. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k;
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

/s/ Michelle Garamella
Michelle Garamella

Respectfully submitted,

THE SWANEY LAW FIRM

/s/ Robert T. Healey

Robert T. Healey
EDMO # 3356; Missouri Bar #34138
Attorney at Law
3460 Hampton, Suite 205
St. Louis, MO 63139
rhealey@swaneylawfirm.com
telephone: (314) 481-7778
fax: (314) 481-8479